

## BOOK REVIEW

Yanhong Yin, *The Idea of a Chinese Arrest Warrant: Surrender of Fugitive Offenders between Mainland China [Hong Kong, and Macau [Hong Kong University Press, 2024, Paperback, 256 ppHK\$495] ISBN 978-988-8876-83-9.*

This book proposes a novel idea for the Chinese domestic surrender system. Based on the example of the European arrest warrant, the book offers an interesting legal proposal that is grounded on the Chinese “one country, two systems” principle. According to the author, the Chinese domestic surrender system should respect the divergence inherent to the Chinese multi legal system and guarantee a sufficient protection for human rights of the requested persons.

The conceived Chinese arrest warrant system is based on the mutual recognition principle underpinning the European arrest warrant, adjusting it to the Chinese “one country, two systems” principle. In some respects mutual recognition would be applied in a more restricted way, in others, in a more expansive manner. This variation aims to achieve a harmonious, balanced and durable cooperation in criminal matters within the entire Chinese territory, including the Mainland, Hong Kong and Macau.

The conceived Chinese arrest warrant system judicialises the whole procedure, with the aim of offering sufficient protection to the requested persons while speeding up the surrender procedure. Hence, this system differs profoundly from the US interstate rendition system and the Mainland China’s interprovincial arrest system. More easily than in the European arrest warrant, the qualified judicial authorities could be clearly listed in the proposed Chinese arrest warrant system in line with the independence and impartiality criteria, given that only three legal territories are involved. Additionally, the conceived Chinese arrest warrant also suggests that a court comparable to the Court of Justice of the European Union and a committee like the Eurojust should be set up in China to settle the disputes regarding the implementation of the Chinese arrest warrant system. The mentioned committee would be competent to settle jurisdictional conflicts, subject to judicial review. The Standing Committee of the Chinese People’s Congress would have the competence to confirm the systematic deficiency or violation on human rights in one region, which would lead to the suspension of the execution of the Chinese arrest warrant automatically. Although the proposed organizational setting aims at full judicialization of the procedure, the author did not consider the possibility of attribution of the competence to confirm the systematic deficiency or violation on human rights in one region to a judicial body, with jurisdiction over the entire country, and whether this competence would comply with the autonomy of Hong Kong and Macau.

The *ne bis in idem* should be applied in the Chinese arrest warrant system, to protect the rights of the requested persons. It is proposed that the law of the requesting region should dominate the interpretation of *bis* and *idem* for the implementation of the mutual recognition principle.

To respect the divergence of the legal systems and protect the legality principle, the double criminality canon should be satisfied for the execution of a Chinese arrest warrant. But several categories of offences should not be subjected to the double criminality canon, to safeguard the core legal values and interests of the requesting region. Importantly, the author proposes that the national security offences and other politically sensitive offences such as “picking quarrels and provoking troubles” should still be under the double criminality canon when executing a Chinese arrest warrant, providing a crucial safety net for the requested persons. Another fundamental guarantee is that people sentenced to the death penalty would not be surrendered. Besides the death penalty guarantee, the proposed Chinese arrest warrant system also requires that the requesting region should guarantee that the people sentenced to life imprisonment should have their sentence reviewed after a certain period of detention.

Quite surprisingly, the author rejects a political offence exception in the China arrest warrant system, believing that human rights monitoring will make up for the omission of political offence exception to some degree. Even though the political offence has been abolished in some jurisdictions, the loss of this guarantee raises serious human rights concerns.

The surrender of residents should be the general rule, and the nationality exception should not be applied. However, the identity of permanent residents in Hong Kong and Macau as well as in the Mainland China could still be a ground for transferring sentenced persons to serve the sentence in another region. Thus, the conceived Chinese arrest warrant system also suggests that an agreement on the transfer of sentenced persons between Mainland China, Hong Kong and Macau should be concluded to facilitate the execution of a Chinese arrest warrant.

Lastly, human rights protection in the proposed Chinese arrest warrant system is deeply rooted in the Chinese Constitution which requires that the three regions promote human rights in the whole Chinese nation. Thus, human rights protection in the Chinese arrest warrant system should be achieved in a comprehensive, constructive and interactive way. A direct refusal of execution based on human rights grounds is rejected in the proposed Chinese arrest warrant system. The author seeks to elaborate a sophisticated and tailored human rights protection method. To achieve this purpose, dialogue and communication between the requesting and the requested regions are encouraged and effective involvement of both sides is required. Thus, the human rights protection in the Chinese arrest warrant would be carried out in two levels, both in the requested region and in the requesting region, and in two steps, general and specific. After the surrender, monitoring by the requested region and regular reporting meetings between the two sides would also be needed.

In sum, this book presents an inspiring legal proposal for an important practical problem of the Chinese domestic surrender system. The quality of the research provided by Dr Yanhong Yin in this book merits the attention of the Chinese political and academic authorities. As a former judge of the European Court of

Human Rights and a former judge in Portugal, I am very well acquainted with the European arrest warrant system and I can testify to its huge practical contribution to the improvement of the surrender of offenders in Europe, with full respect of European human rights standards. After having read this book, I can only express my hope that the Chinese authorities can reap the benefits of this European successful experience and reform the Chinese domestic surrender system in line with the European model. This would also strongly facilitate the cooperation between the European and the Chinese in criminal matters.

*Paulo Pinto de Albuquerque\**

\* Former judge of the European Court of Human Rights (2011–2021), president of the Committee on the Rules of the Court, member of the Grand Chamber panel and the founder and president of the Criminal Law Group of the Court; currently a lawyer and full professor at the Lisbon Catholic University, Portugal; palbu@ucp.pt.

